

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALABAMA
NORTHERN DIVISION

GARRETT LEON GAINES, A 9:30

Petitioner,
vs.
A.P. HACKBERRY,
District
Attorney,
Mobile Distr.

vs.

CIVIL ACTION NO. 2:05-CV-
1032-T
(WD)

WARDEN GLENN DUNN
Mobile, et al.,
Respondent,

Motion

Comes now, GARRETT GAINES, Petitioner in the above style and cause, in response to recommendation for summary judgment of Petitioner's Honored Counsel Petitioner Petitioner objects for the following reasons:

Back Ground

(1) ON FEBRUARY 14TH, 2003, GAINES WAS INVOLVED IN AN INTERACTION WITH A FELLOW INMATE. IT WAS DISCOVERED AND GAINES WAS ARRESTED AND PLACED IN ADMIN. SEPARATION. ON MARCH 7, 2003, GAINES WAS SERVED A CHARGE FOR ASSAULT ON ANOTHER INMATE. IT WAS SERVED UPON HIM TWENTY (20) DAYS LATER. GAINES WAS FOUND GUILTY AND IT WAS DETERMINED HE WOULD RECEIVE 2 YEARS GOODTIME CREDITS. WHICH PUSHED HIS RELEASE DATE FROM MARCH 21, 2006 TO NOVEMBER 1, 2006. IN MARCH 2003 DUE TO BEING

FOUND GUILTY OF STATE DISCIPLINARY. PLAINTIFF WAS RECLASSIFIED IN MARCH 2003 FROM LEVEL (4) FOUR CUSTODY TO LEVEL (6) SIX MAXIMUM CUSTODY AND HAS BEEN IN SEPARATION IN A SINGLE CELL SINCE THEN, ALONG WITH CUSTODY. PLAINTIFF IS LOCKED DOWN WITHIN HIS CELL FOR TWENTY-THREE (23) HOURS A DAY, AND WHENEVER HE DOES COME OUT, HE IS HANDCUFFED AND CHAINED AND IS ALLOWED TO WALK AROUND A SMALL COURT FOR 15 MINUTES, IF HE IS LUCKY. PLAINTIFF CAN NO LONGER ATTEND THERAPEUTIC SERVICES AS HE ONCE WAS ABLE TO IN GENERAL POPULATION, NOR IS HE ALLOWED A PHONE CALL, BUT ONCE A MONTH FOR ONLY FIVE MINUTES, WHERE UPON HE WAS ABLE TO USE THE PHONE WHENEVER HE CHOOSES TO IN GENERAL POPULATION FOR HOWEVER LONG.

LAW AND REASONMENT

1) THE STATE CHOOSES TO USE THE SANDIN CASE AS THE PRECEDENT AND BINDING CASE. RETALIATION SHOULD BE ALLOWED TO PROCEED WITH HIS HOLDINGS CORRECTION BECAUSE HE HAS NOW SHOWN THAT THE VIOLATION OF HIS PROCEDURAL DUE PROCESS RIGHTS IN AN "ATYPICAL AND SIGNIFICANT MANNER" ON THE INMATES IN REACTION TO THE "DRASTIC INCIDENTS OF PRISON LIFE". SANDIN, 515 U.S. 472

2) PETITIONER WAS NOT SERVED DISCIPLINARY CHARGES UNTIL (20) TWENTY DAYS AFTER A DIRECT VIOLATION OF REGULATION 105.11, A AND D SECTION. PETITIONER WAS FOUND GUILTY AND FROM A RESULT LOSSES 2 YEAR GOODTIME AND LOSSES RE-CLASSIFIED FROM LEVEL (4) FOUR GENERAL POPULATION TO LEVEL (6) MAX CUSTODY AND PLACED IN SEGREGATIONAL CONFINEMENT. PETITIONER WAS PLACED UNDER "RESTRAINT" THEREFORE HIS PETITION FALLS UNDER THE GUARANTEES OF "Sanctions" 515 U.S. 472, 483-84 (1995).

3) The nature of the deprivation was dramatic AND THE STATE DID CREATE A LIBERTY INTEREST UNDER QUANDIN, AT 483-484.

CONCLUSION

PETITIONER'S OBJECTION IS DUE TO BE SUSTAINED AND ALLOWED TO PROCEED IN THE APPLICATION OF HIS HABEAS CORPUS TO PROVE THE MERITS OF HIS CASE. PETITIONER IS DUE FOR RELIEF.

DONE THIS 15TH DAY OF NOVEMBER 2005.

Shirley J. Miller
BARBARA E. MILLER

~~CERTIFICATE OF SERVICE~~

I HEREBY CERTIFY THAT I SERVED
A COPY OF THE ABOVE ON THE DE-
FENDANTS ADDRESSED TO:

WILLIAM THOMAS GENERAL COUNCIL
DODOL

301 REIDLEY STREET
MONTGOMERY, ALA.

326130

BY MAILING IN U.S. POSTAL, PRE-
PAID 1ST CLASS, ON THIS 15 DAY OF
NOVEMBER 2005.

Garrett Gaines
GARRETT GAINES